

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ZESTY PAWS LLC,

Plaintiff,

v.

NUTRAMAX LABORATORIES, INC. and
NUTRAMAX LABORATORIES VETERINARY
SCIENCES, INC.,

Defendants.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Zesty Paws LLC (“Zesty Paws”), by its undersigned counsel, as and for its Complaint against Defendants Nutramax Laboratories, Inc. (“Nutramax Labs”) and Nutramax Laboratories Veterinary Sciences, Inc. (“Nutramax LVS,” and together with Nutramax Labs, “Nutramax Labs”), alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory relief under 28 U.S.C. §§ 2201, 2202 and the federal Lanham Act, 15 U.S.C. §§ 1501, et seq.

2. Zesty Paws is a pet supplement company that uses the Zesty Paws brand to market its pet supplement products both online and in retail stores. It brings this action to put an end to baseless accusations and threats of litigation made by its competitor, Nutramax Labs, regarding certain of Zesty Paws’ marketing claims.

3. The dispute centers on Zesty Paws’ claims that it is the “#1 Brand of Pet Supplements in the USA,” “USA’s #1 Brand of Pet Supplements, and the “#1 selling Pet Supplement Brand in the USA” (individually, a “#1 Claim” and collectively, the “#1 Claims”).

4. Nutramax Labs is a competing pet supplement company. It markets its pet supplements and other products under multiple brands, such as Dasuquin® and Cosequin®. Nutramax Labs asserts that Zesty Paws’ #1 Claims are false and misleading because Nutramax—not Zesty Paws—is the top selling pet supplement *brand* in the United States.

5. Nutramax Labs’ combined sales as a pet supplement company are distinct from the sales of each of its brands. Brands are related to product lines and inform the consumer as to what they are buying.¹ The market share of a particular company is the percentage of the overall market that it owns, whereas brand share is the percentage of the market owned by a particular brand. Nutramax Labs does not market itself as a “brand,” but as a company that sells products under an array of different brands—none of which has a brand share greater than the Zesty Paws pet supplement brand.

6. Over the course of nearly five months, including during a recent contractually mandated mediation session, Zesty Paws has repeatedly demonstrated to Nutramax Labs that unlike Nutramax Labs, Zesty Paws markets all of its pet supplement products under its single Zesty Paws brand, which makes Zesty Paws the #1 “brand” of pet supplements in the U.S.

7. The #1 Claims are grounded in this fact, which Nutramax Labs does not dispute. The Zesty Paws #1 Claims are certified by Euromonitor International Limited (“Euromonitor”), one of the leading market research companies for consumer products. The #1 Claims are accompanied by a clear and unambiguous explanatory statement that identifies Euromonitor as the source of the data and explains the methodology Euromonitor used to reach its conclusions regarding the #1 Claims.

¹ For example, a consumer identifies with buying Fritos, not PepsiCo corn chips.

8. Despite Zesty Paws' good faith attempts at avoiding litigation, Nutramax Labs continues to insist that the #1 Claims are false and misleading. By letters dated July 17, 2023 and October 16, 2023, Nutramax Labs has threatened to sue Zesty Paws for violations of the Lanham Act (15 U.S.C. § 1125(a)(1)(B)) as well as other unspecified federal and state statutes. Nutramax Labs' past conduct, including in bringing other lawsuits against Zesty Paws, demonstrates that its threat of litigation is imminent and real.

9. Thus, Zesty Paws seeks a declaration from this Court that the #1 Claims are not false or misleading under the Lanham Act, or any other federal or state laws.

THE PARTIES

10. Zesty Paws is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located in Orlando, Orange County, Florida, and is a citizen of Delaware and Florida.

11. Upon information and belief, Nutramax Labs is a corporation organized and existing under the laws of the state of South Carolina, with its principal place of business in Lancaster, South Carolina, and is a citizen of South Carolina.

12. Upon information and belief, Nutramax LVS is a corporation organized and existing under the laws of the state of South Carolina, with its principal place of business in Lancaster, South Carolina, and is a citizen of South Carolina.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, and seeks relief, *inter alia*, under the Declaratory Judgment Act, 15 U.S.C. §§ 2201 and 2202.

14. This Court has personal jurisdiction over Nutramax Labs pursuant to C.P.L.R. § 302(a)(1) as Nutramax Labs supplies and markets its goods in New York State. In addition, Nutramax Labs agreed that any future legal action between the parties shall be brought exclusively in the United States District Court for the Southern District of New York.

15. This Court has personal jurisdiction over Nutramax LVS pursuant to C.P.L.R. § 302(a)(1) as Nutramax Labs supplies and markets its goods in New York State. In addition, Nutramax LVS agreed that any future legal action between the parties shall be brought exclusively in the United States District Court for the Southern District of New York.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because, among other things, a substantial part of the events or omissions giving rise to Zesty Paws' claims arose in this District, and Nutramax Labs and Nutramax LVS are subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

A. Zesty Paws and the #1 Claims

17. Zesty Paws is a health and wellness company for dogs and cats founded in Orlando, Florida in 2014.

18. Zesty Paws' current product lines for dogs (the puppy collection, immune support, multifunctional, behavioral, hip and joint, gut health, and skin support) and cats (immune support, behavioral, gut health, and skin support), include the following, which are manufactured, marketed, and sold in various flavors:

- Zesty Paws 8-in-1 Bites for Dogs
- Zesty Paws 11-in-1 Multifunctional Bites™ for Senior Dogs
- Zesty Paws Mobility Bites™ for Senior Dogs
- Zesty Paws Hip & Joint Mobility Bites Soft Chews for Dogs
- Zesty Paws Multi-Collagen Bites™ for Dogs
- Zesty Paws Hairball Bites™ for Cats

Zesty Paws Aller-Immune Bites™ for Cats
Zesty Paws Calming Bites for Cats
Zesty Paws Hemp Elements Plus™ Hairball Bites™ for Cats²

19. Zesty Paws sells these food supplements and treats for dogs and cats exclusively under the “Zesty Paws” brand.

20. Zesty Paws displays the #1 Claims on its website, social media accounts, and various other marketing mediums.

21. The #1 Claims are accompanied by a detailed footnote clearly identifying Euromonitor, one of the leading comprehensive market research companies for consumer products, as the source for the #1 Claims (the “Euromonitor Footnote”):

Source Euromonitor International Limited; Custom Research conducted June 2023, value sales for all retail channels, excluding vets. Pet Supplements category as per Passport Ecommerce online sales estimates based on 4,019,166 online shopper panelists in the USA for 2022 across 27 US online retailers selling pet dietary supplements.

² The fact that Zesty Paws has trademarked certain elements of its trade names does not mean that Zesty Paws is not the brand under which its products are marketed. For example, Cheetos has trademarked “Flamin Hot” for use in its marketing of products such as Cheetos Flamin Hot Puffs, Cheetos Flamin Hot Pretzels, Cheetos Flamin Hot Mac n Cheese. Cheetos remains the brand under which each of these “Flamin Hot” products is marketed.

22. The #1 Claims have appeared as follows on Zesty Paws' website:

"Zesty Paws is the #1 Brand of Pet Supplements in the USA"
"USA's #1 Brand of Pet Supplements"
"#1 Brand of Pet Supplements in the USA"

Footnote 1: "Source Euromonitor International Limited; Custom Research conducted June 2023, value sales for all retail channels, excluding vets. Pet Supplements category as per Passport Ecommerce, online sales estimates based on 4,019,166 online shopper panelists in the USA for 2022 across 27 US online retailers selling pet dietary supplements."

"Zesty Paws is the #1 selling Pet Supplement Brand in the USA"

Footnote 2: "Source Euromonitor International Limited; Custom Research conducted June 2023, volume sales for all retail channels, excluding vets. Pet Supplements category as per Passport Ecommerce, online sales estimates based on 4,019,166 online shopper panelists in the USA for 2022 across 27 US online retailers selling pet dietary supplements."

23. The Euromonitor Footnote is clear and unambiguous.

24. Euromonitor specializes in applying proprietary data science techniques to measure online sales at a category, company and brand level, in order to identify comparable data for use in analytics such as calculating brand share and market share. Euromonitor couples its use of e-commerce system data with manual in-store and online audits, and "pulse" interviews with store personnel, to capture accurate pricing data and in-store perspective on sales and brands.

25. Zesty Paws spent significant sums of money commissioning Euromonitor to research the #1 Claims based on online sales to over 4 million shopper panelists in the U.S. during the year 2022, across 27 U.S. online retailers selling pet dietary supplements, for all retail channels excluding vets.

26. The #1 Claims and Euromonitor Footnote were formulated based upon the results of Euromonitor’s survey.

B. Nutramax Labs’ Multiple Brands

27. Nutramax Labs markets its pet supplement products under more than fifteen (15) registered trademarked brands, some of which are available exclusively from veterinarians, including such brands as:

Dasuquin®	Imuquin®
Cosequin®	Dermaquin®
Denamarin®	Naraquin®
Denosyl®	Consil®
Solliquin®	Welactin®

28. Nutramax Labs markets and sells multiple different products under these individual brands. For example, the “Dasaquin®” brand product catalog for pets includes “Dasuquin® Sprinkle Capsules for Cats” and “Dasuquin® with MSM Soft Chews.”

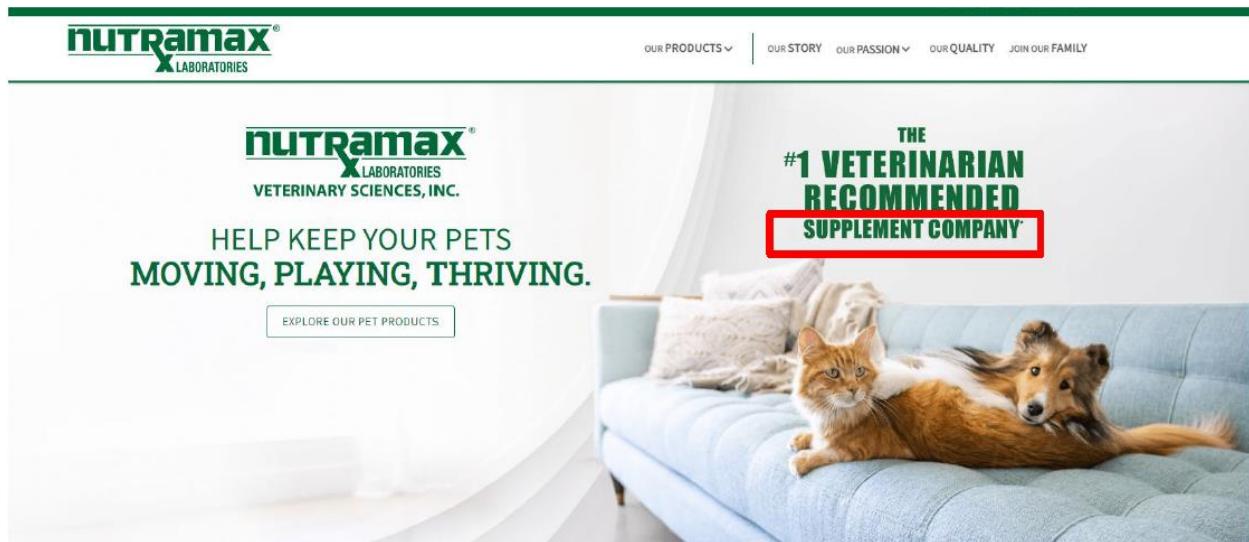
29. The “Cosequin®” brand product catalog for pets includes “Cosequin Minis Maximum Strength With MSM Plus Omega-3s Soft Chews” and “Cosequin Maximum Strength Plus MSM Chewable Tablets.”

30. As a corporation that owns brands that sell pet supplements (and also owns brands that sell products in the human category, such as Cosamin® ASU for human joint health³), Nutramax Labs grants third parties the rights to manage and distribute its brands, including Cosequin, Dasuquin and Denamarin, in various international markets.

³ Cosamin, which Nutramax Labs markets as its “Glucosamine/Chondroitin Brand” makes the obvious point that Nutramax Labs cannot both position such a product as a brand and then attempt to leverage broader company sales under a Nutramax “brand” as well—e.g., Nutramax is not a “Glucosamine/Chondroitin” company.

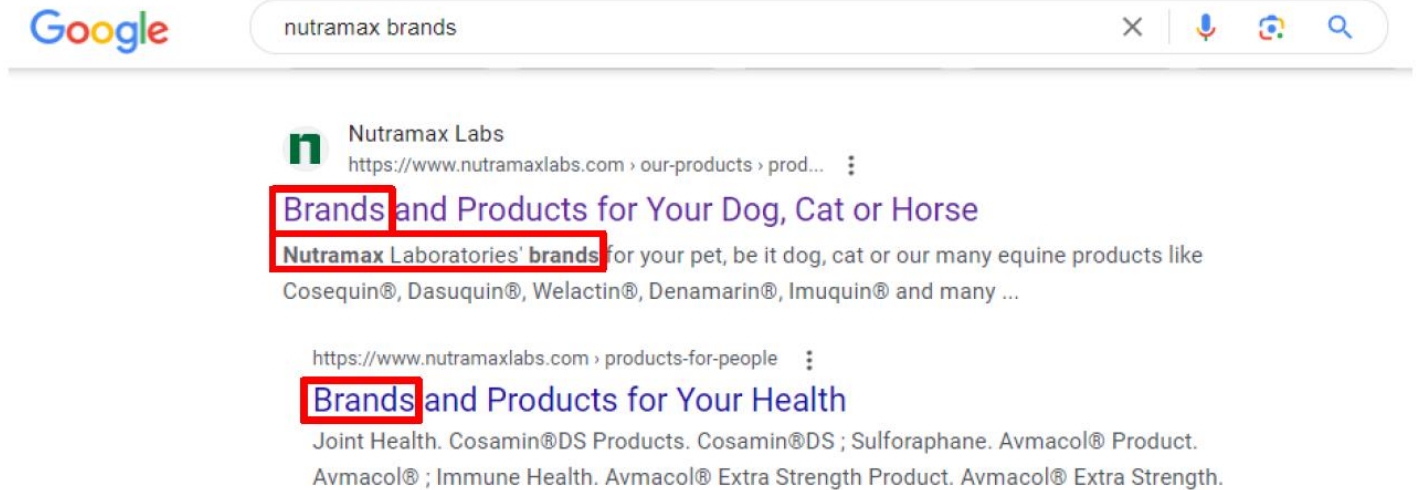
31. Yet none of Nutramax Labs’ individual brands, even its most popular brands—Dasuquin and Cosequin—sell more pet supplements in the US market than the pet supplements sold under the Zesty Paws brand.

32. Nutramax Labs’ own website does **not** claim that Nutramax Labs is the “#1 Veterinarian Recommended *Brand*,” it claims that Nutramax Labs is the “#1 Veterinarian Recommended *Supplement Company*” (emphasis added)⁴:

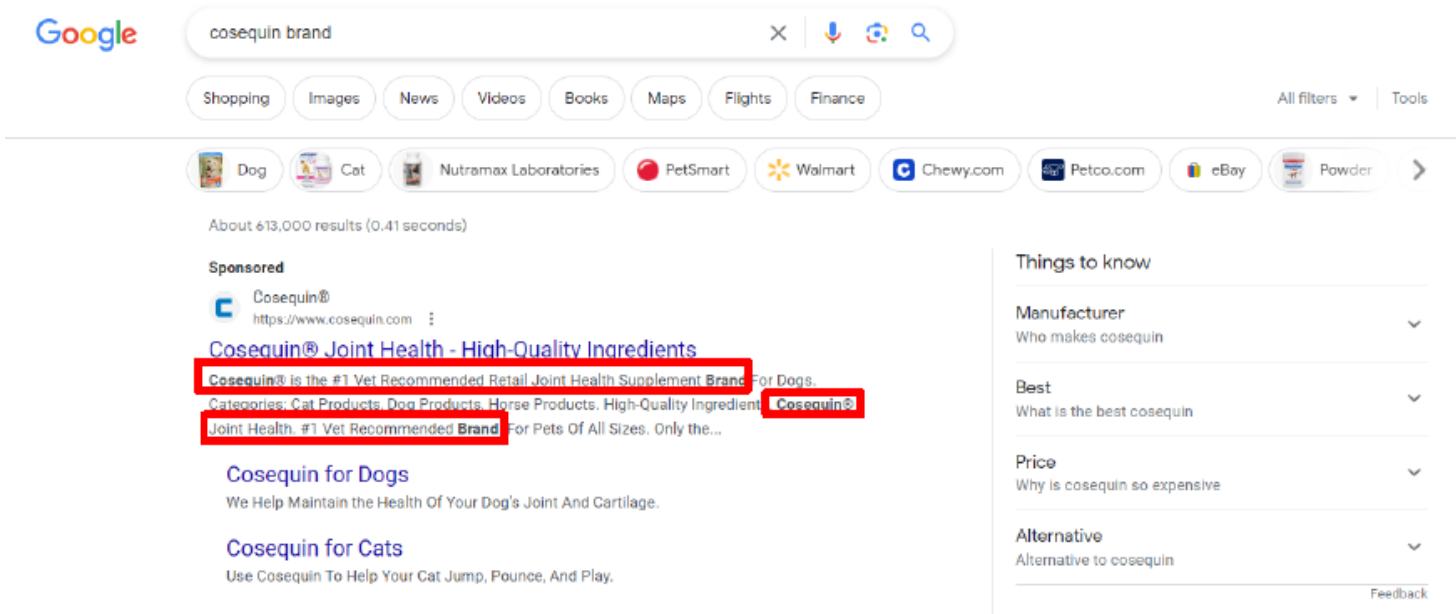


33. A simple Google search for ‘Nutramax brands’ reveals that Nutramax Labs considers itself to have many different brands, including Cosequin®, Dasuquin®, Welactin®, Denamarin®, and Imuquin®,” among others. In fact, Nutramex’s own website states that “Nutramax Laboratories’ *brands* for your pet, be it dog, cat or our many equine products . . .” (emphasis added) and even includes web pages with titles referring to “Brands” (plural):

⁴ <https://www.nutramaxlabs.com/our-products/products-for-your-dog-cat-horse>, retrieved December 11, 2023 (red box added for emphasis).



34. Consistent with these representations, Nutramax Labs advertises its Cosequin® product line as the “#1 Vet Recommended Retail Joint Health Supplement **Brand** for Dogs” (emphasis added):



35. The cosequin.com webpage on the Nutramax Labs website identifies Cosequin® as the “#1 Veterinarian Recommended **brand**” (emphasis added):



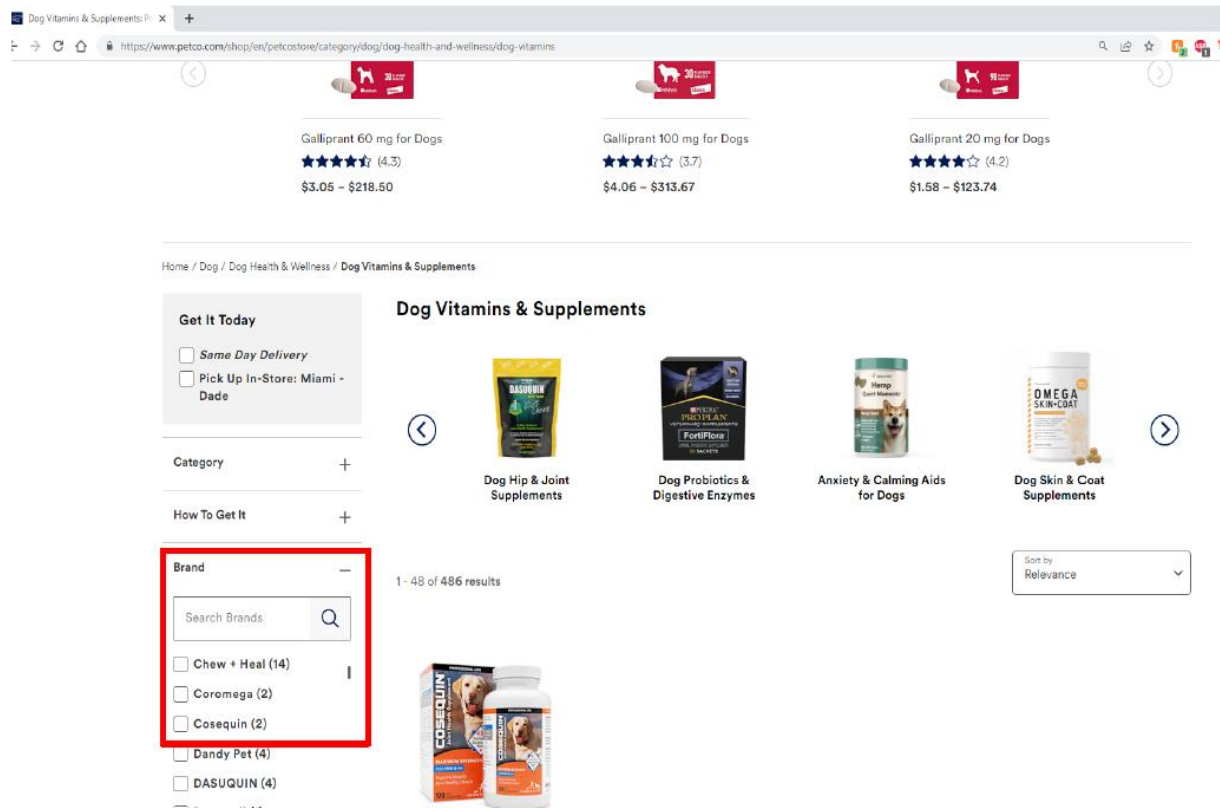
36. Likewise, Nutramax Labs advertises its Denamarin® product line as the “#1 veterinarian recommended liver support **brand**” on its “denamarin.com” website page (emphasis added):



DENAMARIN® TABLETS

- ✓ The #1 veterinarian recommended liver support brand[†]
- ✓ Denamarin is a supplement for dogs and cats containing S-Adenosylmethionine (SAME) and silybin
- ✓ Available in enteric-coated tablets for cats

37. The websites of retailers such as Petco, for example, also show that Nutramax Labs' Cosequin® and Dasuquin® products are considered different "brands" at the retail level⁵:



38. Even the Nielsen Company (US), LLC ("Nielsen"), structures Nutramax Labs' brands such as Cosequin® and Dasuquin®, as the separate brands that they are.⁶ For instance, Nielsen states that Cosequin® and Dasuquin® are brands, and that Nutramax Labs is the manufacturer for both of these brands.

⁵ <https://www.petco.com/shop/en/petcostore/category/dog/dog-health-and-wellness/dog-vitamins>, retrieved December 11, 2023 (red boxes added for emphasis).

⁶ Nutramax Labs cites Nielsen data on the Cosequin® website to support its claim that Cosequin® is the "Joint health supplement brand used the most by pet parents." See, e.g., <https://www.cosequin.com/> (final item next to last of several interspersed asterisks throughout webpage reads "Source: Based in part on data reported by Nielsen through its AOD Service for the Pet Customer Category - Joint Relief for the 52, 24, 12, and 4 week periods ending 2/25/2023, for the U.S. market. Copyright (c) 2023 Nielsen.").

39. Additionally, in a prior lawsuit it filed against Zesty Paws, Nutramax Labs drew a contrast between its own marketing strategy and that of Zesty Paws. Specifically, Nutramax Labs acknowledged that while Zesty Paws “advertises, promotes, offers for sale, and sells ***Zesty Paws-brand*** dietary and nutritional pet supplement products to consumers throughout the United States,”⁷ Nutramax Labs “on its own and through its licensed affiliates and resellers, has sold its health supplement products for humans and animals across the United States ***through a diversified portfolio of well-recognized and wide-trusted brands***, including but not limited to its Dasuquin® product line for dogs and cats.”⁸

C. Nutramax Labs Initiates the Current Dispute with Zesty Paws

40. On July 17, 2023, Nutramax Labs sent Zesty Paws a “Notice of Dispute” regarding the #1 Claims.

41. In its Notice of Dispute, Nutramax Labs claimed that “Zesty Paws is not the #1 selling or #1 brand of pet supplements in the United States. Nutramax is the top-selling pet supplement brand.” Nutramax Labs asserted that “[t]o be able to make such an unqualified statement, Zesty Paws would have to compare the sales of its entire line of pet supplement products to Nutramax’s entire line of pet supplement products across all U.S. sales channels.” Nutramax Labs further asserted that the “total sales figures in the U.S. are not even close.”

42. Nutramax Labs further claimed that the Euromonitor Footnote is “misleading” as the #1 Claims were “based on mere sales *estimates*” and “there is no way for Zesty Paws to have accurate, lawfully obtained sales data for Nutramax Labs because the necessary data set is not publicly available.”

⁷ See *Nutramax Labs., Inc. v. Zesty Paws LLC*, No. 6:22-cv-626 (M.D. Fla. 2022) at ECF No. 30 at ¶¶ 9-14; ECF No. 47 at ¶¶ 9-10; ECF No. 56 at ¶¶ 9-10) (emphasis added).

⁸ *Id.* at ECF No. 2 at ¶ 14; ECF No. 30 at ¶ 20; ECF No. 47 at ¶ 16; ECF No. 56 at ¶ 16 (emphasis added).

43. Nutramax Labs also claimed that the #1 Claims are “misleading as the disclaimer materially changes the main message of the claim.” According to Nutramax Labs, “Zesty Paws cannot state that it is the ‘#1 brand’ or ‘#1 selling brand’ of pet supplements in the United States and then, in the fine print, *exclude the entirety of the vet channel*.” Nutramax Labs claimed that disclosures “cannot be used to change the express meaning of a claim or to render truthful an otherwise misleading advertising claim.”

44. Nutramax Labs asserted that the #1 Claims “violate various state and federal laws, including the Lanham Act” and demanded that Zesty Paws “immediately and permanently cease all use, in any form or fashion, of the #1 Claims.”

45. By letter dated August 1, 2023, Zesty Paws responded to Nutramax Labs’ Notice of Dispute, explaining that the Euromonitor Footnote is accurate and rejecting Nutramax Labs’ contention that “Zesty Paws would need to look at Nutramax’s entire product line and obtain detailed figures before it can make such an advertising claim.” Zesty Paws noted that both parties have represented throughout their respective marketing strategies that while Zesty Paws markets all of its products under a single eponymous brand, Nutramax Labs does not.

D. Nutramax Labs Threatens a Lawsuit to Enjoin Zesty Paws from Marketing its Brand Using the #1 Claim

46. By letter dated October 16, 2023, two and a half months after Zesty Paws responded to Nutramax Labs’ Notice of Dispute, Nutramax Labs again threatened to “file an action seeking immediate injunctive relief unless Zesty Paws agrees to cease making the [#1] claims[.]” In the October 16 letter, Nutramax Labs attempted to downplay its admissions (made on its product labels, website and in its prior pleadings) that Nutramax Labs does not market itself as the “Nutramax brand” but through *a diversified portfolio of well-recognized and wide-trusted brands* such as Cosequin® and Dasuquin®.

47. Nutramax Labs now asserted that it featured the “NUTRAMAX mark” in stylized lettering on the packaging for every Nutramax Labs product and claimed that its marketing of “sub-brands such as Cosequin, Dasuquin, or Proviaable does not negate the fact that NUTRAMAX is a brand.”

48. By letter dated October 19, 2023, Zesty Paws responded to Nutramax Labs’ October 16, 2023 letter by restating its agreement to mediate in accordance with the parties’ Settlement Agreement.

49. A mediation was held on December 7, 2023, but the parties were unable to resolve their dispute.

50. Nutramax Labs informed Zesty Paws that it would file a complaint against it for violations of the Lanham Act and other unspecified federal and state laws and move for a preliminary injunction if Zesty Paws did not confirm, by December 13, 2023, that it would no longer use the #1 Claims.

51. By email dated December 13, 2023, Zesty Paws informed Nutramax Labs that it would not discontinue using its #1 Claims.

52. Without this Court’s intervention and determination that the #1 Claims are not false or misleading, Zesty Paws stands to suffer imminent and severe harm from Nutramax Labs’ continuing efforts to prevent it from using the #1 Claims in the marketplace.

COUNT I
(Declaratory Judgment)

53. Plaintiff repeats and incorporates by reference paragraphs 1 through 57 above as if fully set forth herein.

54. Zesty Paws displays the #1 Claims on various products and advertisements, including the Euromonitor Footnote.

55. Nutramax Labs contends that the #1 Claims are false and misleading. Nutramax Labs contends that it—and not Zesty Paws—is the #1 pet supplement brand in the United States.

56. Nutramax Labs has threatened to bring a lawsuit against Zesty Paws for violation of the Lanham Act, and other unspecified federal and state laws, based on the #1 Claims.

57. Zesty Paws asserts that the #1 Claims are true and not misleading, because unlike Nutramax Labs, which markets pet supplements through numerous brands, Zesty Paws markets its pet supplements through a single “Zesty Paws” brand.

58. The allegations and threats set forth in the written communications from Nutramax Labs confirm that there is an actual judicial controversy between the parties having adverse legal interests, of sufficient immediacy to warrant the issuance of a declaratory judgment.

59. Zesty Paws is under real, imminent threat that Nutramax Labs will bring suit against it in the immediate future for false advertising, together with other related causes of action.

60. By reason of the foregoing, Zesty Paws has suffered and will continue to suffer irreparable harm from Nutramax Labs in the manner set forth above unless a declaratory judgment issues preventing Nutramax Labs from interfering with Zesty Paws or taking any other action based upon the aforesaid acts.

61. Zesty Paws has no adequate remedy at law.

62. As a result of the foregoing, Zesty Paws is entitled to a declaratory judgment that the #1 Claims are not false or misleading under the Lanham Act, or any other federal or New York state laws.

PRAYER FOR RELIEF

WHEREFORE, Zesty Paws respectfully requests:

- a. That the Court declare that the #1 Claims are not false or misleading under the Lanham Act or any other federal or New York state laws;
- b. That the Court declare that Nutramax Labs is not entitled to any monetary award from Zesty Paws, or to any injunctive or other equitable relief;
- c. That Zesty Paws be awarded its reasonable attorneys' fees and costs; and
- d. Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
December 13, 2023

Respectfully submitted,

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